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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,451	10/16/2003	Richard J. Ernst	14303	8743

7590 08/25/2006

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EXAMINER

EPPS, TODD MICHAEL

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/687,451	<b>Applicant(s)</b> ERNST ET AL.	
	<b>Examiner</b> Todd M. Epps	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2,8,12,14,15,26, and 31-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,8,12,14,15,26 and 31-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This is the fourth Office Action for serial number 10/687,451, Rod Hanger For Securing A Rod To A Substrate, filed on October 16, 2003.

#### ***Withdrawal***

The third Office Action that was sent out on June 8, 2006 has been considered and is withdrawn. In the Office Action, claims 31, 32, and 35 were rejected under U.S. Patent No. 6,667,185 to Chin, which contained a typographical error on the patent number - "U.S. Patent No. 6,667,185 to Chin" should be -- **U.S. Patent No. 6,677,185 to Chin** --.

#### ***Withdrawal of Finality***

Applicant's request for reconsideration of the finality of the rejection of the second Office Action is persuasive and, therefore, the finality of that action is withdrawn.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2, 8, 12, 14, 15, 26, and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,758,465 to Logue in view of U.S. Patent No. 4,543,763 to Ernst et al. (Ernst).

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Logue '465 discloses a rod hanger (fig. 5) comprising a generally planar mounting portion (24) defining a perimeter edge, and having a hole (52) along extending between a top surface (40) and a bottom surface (44) with the hole extending therebetween, a generally planar rod receiving portion (34) with a top surface (42), a bottom surface (46) and a hole (60) that includes a lip formation (64) disposed thereabout, and a connecting element (36), wherein the planes of the mounting and rod receiving portions are generally parallel, wherein rod receiving portion configured for threadably receiving the rod, wherein the rod hanger defines a unitary body with generally uniform thickness, wherein the hole of the mounting portion is coincident along the plane, has a radius and defines a circumference of 360 degrees, and wherein the mounting portion has four corners.

However, Logue '465 fails to specifically teach at least four anti-rotation elements on generally planar top surface of the mounting portion plane uniformly spaced from the hole, and wherein four anti-rotation members are configured for penetrating the substrate. Nevertheless, Ernst '763 teaches a mounting portion (fig. 4, 6) with a central hole and four anti-rotation elements (22) disposed about the hole and spaced apart from each other by about 90 degrees along the circumference of the hole and dispose proximate to each of the corners of the mounting portion, and wherein four anti-rotation members are configured for penetrating the substrate (fig. 1). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the hanger of Logue '465 with four anti-rotation elements disposed

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about the hole and spaced apart from each other by about 90 degrees along the circumference of the hole and dispose proximate to each of the corners of the mounting portion as in Ernst '763 wherein doing so would provide for superior rotation prevention means.

Regarding claims 14-15, Logue '465 in view of Ernst '763 disclose the previous invention failing to specifically teach four anti-rotation elements have a generally hemisphered shape. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the shape of the anti-rotation elements of Logue '465 in view of Ernst '763 to be of various shapes including hemispherical or truncated cone since it has been held that a change in shape of a prior art device is a design consideration within the skill of the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Claims 31-32, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logue '465 in view of Ernst '763, and further in view of U.S. Patent No. 6,677,185 to Chin et al. (Chin).

Logue '465 in view of Ernst '763 fails to specifically teach wherein at least four anti-rotation members include a resilient cover, is secured by a chemical adhesive, and the resilient cover is formed of a polymer. Nevertheless, Chin '185 teaches wherein a mounting with dimples and the dimples are secured by an adhesive and polymer on each of them thereof. Accordingly, it would have been obvious to one of ordinary skill in

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the art at the time the invention was made to have included rod hanger of Logue '465 in view of Ernst '763 with the anti-rotation elements and to include an adhesive as taught by Chin '185 wherein doing so would provide thereof for a protective coating on the anti-rotation members with a superior mounting means for supporting a rod.

### ***Response to Arguments***

Applicant's arguments, filed May 26, 2006, with respect to the rejection(s) of claim(s) 14-15, 31-32, and 35 under Hasan '730 and Neuman '680, and have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Ernst '763, and Chin '185.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd M. Epps whose telephone number is 571-272-8282. The examiner can normally be reached on M-F (7:30-4:30).

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TME

Todd M. Epps  
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Art Unit 3632  
August 15, 2006

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